

JAMES A. HOULE & ASSOCIATES
198 UNION STREET, PORTSMOUTH, RHODE ISLAND 02871 (401-662-1543)

**Report Regarding Findings
Related to the Special Use Permit Request
For
An Outdoor Recreational Facility**

At

**0 Walnut Street, 0 Highland Avenue, 0 Russel Avenue, And 0 Park Avenue
Portsmouth, Rhode Island 02871**

**Date of the Report
11 July 2023**

Prepared For:

**Clients of
Matthew L. Fabisch, Esquire
2 Dexter Street
Pawtucket, RI 02860**

Prepared By:

**James A. Houle
James A. Houle & Associates
198 Union Street
Portsmouth, Rhode Island 02871**

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Matthew L. Fabisch, Esquire
2 Dexter Street
Pawtucket, RI 02860
11 July 2023

Dear Mr. Fabisch:

Pursuant to your request, I have reviewed the petition of AP Enterprises, LLC, relating to the proposed use of the property at 0 Walnut Street, 0 Highland Avenue, 0 Russel Avenue, And 0 Park Avenue, in Portsmouth, RI. The property is further identified in the tax assessor's data as plat 20, lots 1, 3 & 13 and plat 25, lot 2, zoned Commercial and R-10 Residential.

The property is currently vacant. The petitioners plan to build a 13 court outdoor beach volleyball facility with a 100 car parking lot on the sites. As part of that project, they are requesting a special use permit. The use requires a special use permit in both the residential and commercial zones.

The purpose of this review was to form opinions as to whether the applicable standards for relief are satisfied. After reviewing the petitions, I inspected the site, surveyed the neighborhood, and reviewed Portsmouth Comprehensive Plan and zoning code, before finally forming my opinions.

After all my review and research, *I feel the petition fails to meet the standards for the special use permit requested.* I feel this will have a substantial negative impact to the neighborhood properties.

The very reason that this use is required to obtain a special use permit is due to the very strong possibility that it will generate negative factors, impacting the neighborhoods in which they are proposed to be located.

Conclusions:

To explain my conclusions, this is essentially a business, serving a recreational use to the public. This is not a public park or public recreational center. The difference must be made clear.

Parks are intended to serve the neighborhoods surrounding them. They are planned and designed to offer a variety of relevant activities to the neighborhood they serve, without generating any negative impact. Typically, they are not concentrated single uses. Even a larger public complex, such as the Glen here in Portsmouth, has a wide range of activities on site.

The recreational system is one for which the Town has shown strong support. The Town of Portsmouth has recently commissioned an extensive Parks, Recreation and Master Plan Report, posted in May 2023 to the Town's website. This report states:

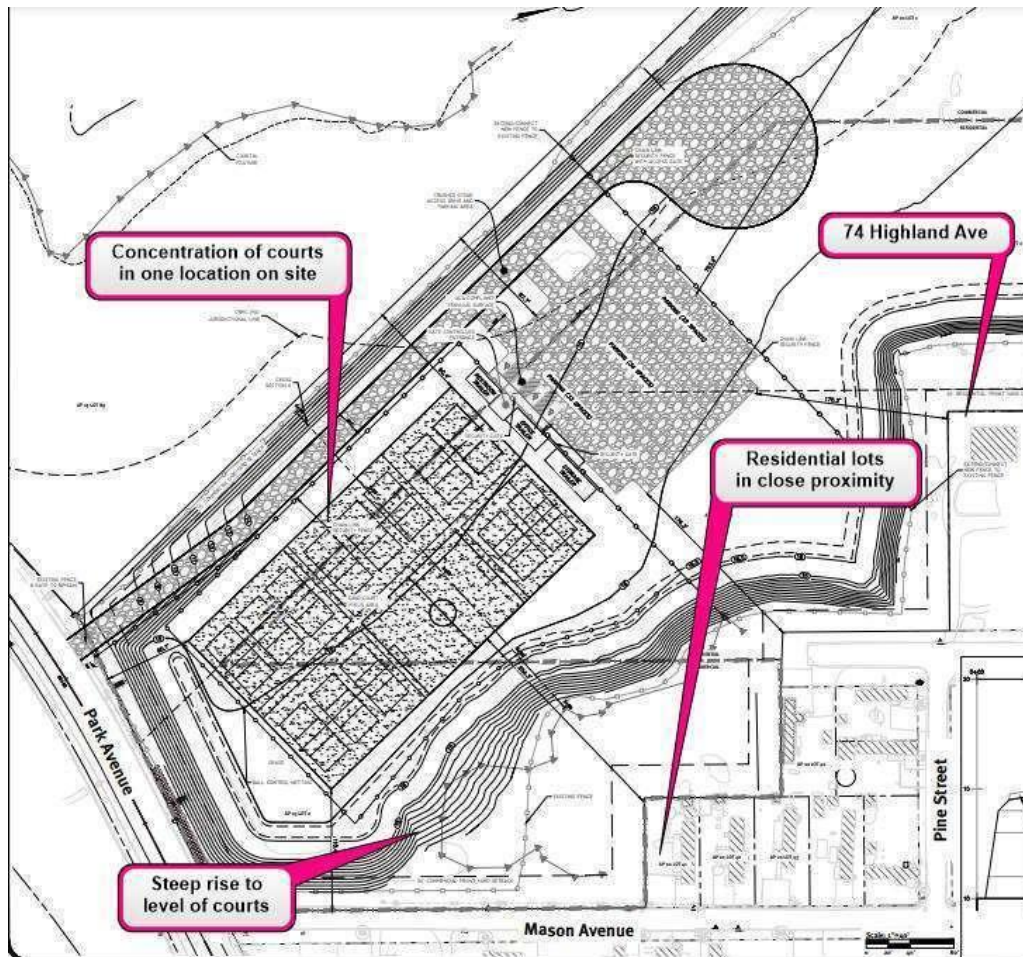
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“The Town is well served by a wide range of parks, recreation, and open space resources throughout the community...”

However, we find that this proposal works independently of the public system. It is a business, not a community monitored asset. As a business, it has a single purpose use. It is designed to attract as many people as possible to a competitive venue.

So, we find that this is a facility which will likely attract people not from the community in which it is located. This tends to lend itself to many of the detrimental issues which have formed our final opinions, all of which revolve around the type of use and intensity of use, in such close proximity to residential uses.

We begin by looking at the proposed site plan:



The concentration of courts is in one spot on the lot, directly next to residential uses. We note that due to the capping of the landfill, the courts will be much higher than the residential uses. Both of those factors will increase any noise issues.

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We have included photos below, taken from Park Avenue and Mason Street. The height of the towering mounds of fill are evident.



View from Park Avenue



Photo from Mason Street

Although no lights or loudspeakers are initially planned, the petition clearly hints at the expansion of those items. This will only increase noise and now add possible disturbance from lights.

It is further important to bear in mind that this is an open air facility, planned for what is generally a summer use. That is the same time residential neighbors would be using their yards. The timing of the noise and other disturbances could not be worse. The plan calls for use until 8:00 PM PLUS. This is the exact time frame residents would be in their yards.

Next, we look at traffic/parking. The proposal is to have a 100 car parking lot. Although this appraiser is not a traffic engineer, it is clear that adding 100 vehicles to what is a densely developed, 2 lane road, used by many local residents to come and go from their homes, will generate a substantial negative impact. This is particularly true when we realize that some of the existing restaurants in this area have their greatest business in the summer season. Some only have their business in the summer.

By itself, having these many people coming and going from the parking lot will only increase the noise and dust to the neighboring homes. We see from the site map that the parking area is as close to the residences as the courts.

Lastly, since parking is at a premium along Park Avenue, we would have to assume that many patrons of the volleyball courts would leave their cars to walk to the beaches or local restaurants/bars, quickly overburdening the parking lot. This could easily force parking outside of the designated areas on site, encroaching into the neighboring residential lots, or even other local businesses, which all are short of needed parking.

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Even if the patrons do not leave the site when finished playing volleyball, we note that in the OASIS plan for use the following:

“Facility Use The facility will have 13 sand courts. Primary use of those courts is for beach volleyball with multiple secondary uses such as beach soccer, beach tennis, and sand strength and conditioning. “

So, we have to assume that patrons in addition to volleyball players will be using some of the space. This would have the same impact of crowding the parking area.

Also, we note that in parks which had uses which became social centers, such as basketball courts, there was measurably increased negative impact as groups tended to foster more disturbance. National Realtors also has measured decline in marketability to homes in close proximity to pickleball courts due to noise.

References:

*From: Athletic Business
December 11, 2013
Source: Security Journal
Summary: park basketball courts have been hailed as a nuisance in many communities, due to associated activities in groups of players who frequent the courts*

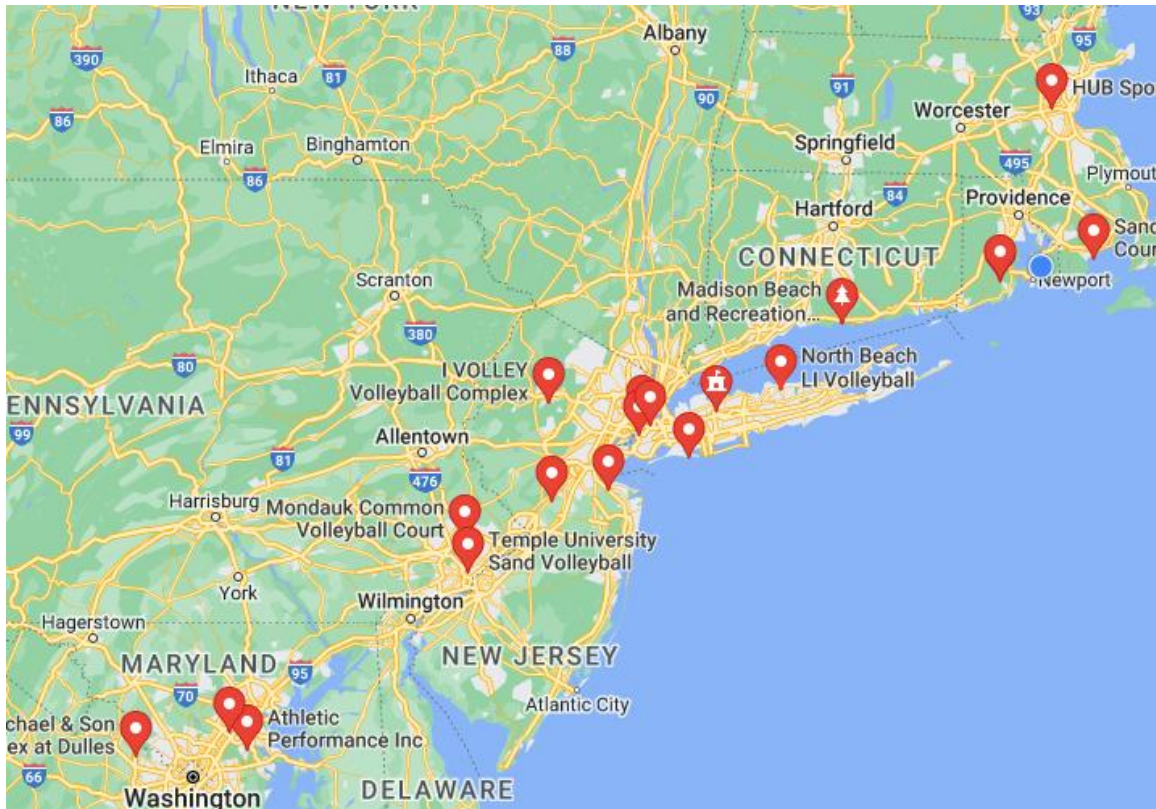
*From: National Association of Realtors
March 14, 2022
Source: Realtor data
Summary: Noise complaints with pickleball are resulting in “really ugly neighborhood drama,” Nicholas Caplin, a founding partner at Lubin Pham & Caplin in Irvine, Calif., told the Los Angeles Times.*

*From: National Recreation and Park Association
March 26, 2020
Summary: Values of homes were impacted when negative factors found at certain venues, such as congestion, street parking, litter and vandalism, noise and intrusive ballfield lights.*

Although these are not exactly the same uses, it is clear that a non compatible outdoor recreational use can generate negative factors which have been measured and discussed.

Our research did not find any other similar beach volleyball courts directly next to residential homes, certainly with no actual beach. If we had, we could have made some direct determinations as to this use. However, since we could not identify any, we need to gather the most similar data possible. See the map below for the volleyball courts we reviewed. None of these are near residential uses, unless on an actual beach, or inside a building.

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We are certain there are others which we did not find, but this gave us a large enough sampling to support the statement that these are typically and generally not built near any non similar, specifically residential use.

Publicly owned and managed parks, designed to serve the community, are generally considered assets to the neighborhood. Private specialty businesses cannot be compared to public parks. In this case, it is fully my opinion that this property, as a private specialty recreational business, will generate negative impact.

As a final note, during my research, I was invited onto the property at 74 Highland Avenue, as the owners had felt observation from this site was of particular importance to the analysis. Having made this on site viewing, I agree that this property is particularly and substantially directly impacted.

74 Highland Avenue is a large corner lot. The petitioner's property abuts 74 Highland Avenue on 2 sides. On each side, the high banking of the cap fill looms closely over this property. This is the location of the parking lot on the petitioner's site plan.

To this appraiser, there is little question development of the proposed use on top of the cap fill will certainly further diminish the marketability and, by extension, the value of the property at 74 Highland Avenue. The issues of noise, dust, possible car lights, potential trespass all become factors of impact.

Review of Standards

Construction of the proposed facility requires a special use permit as provided in the Portsmouth Zoning Ordinances, Article V, Section B:

12. Country club, golf, swimming, tennis or other outdoor recreational facility.

Request for special use permit

Per Article VII, Section A. #5 of the Zoning Code:

Items to be considered when granting a special use permit include, but are not limited to, the following:

- a) The desired use will not be detrimental to the surrounding area;
- b) It will be compatible with neighboring land uses.
- c) It will not create a nuisance or a hazard in the neighborhood.
- d) Adequate protection is afforded to the surrounding property by the use of open space and planting;
- e) Safe vehicular access and adequate parking are provided;
- f) Control of noise, smoke, odors, lighting and any other objectionable feature is provided;
- g) Solar rights of the abutters are provided for;
- h) The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth; and
- i) The health, safety and welfare of the community are protected.
- j) It is consistent with the Purpose of Design Standards set forth in Article IX, Section D. and, for developments within the Town Center District, the purpose of that district as expressed in Article III.

I have reviewed all standards for special use permits and dimensional variances. Below is my analysis. All of the criteria are considered in turn below.

(1) The desired use will not be detrimental to the surrounding area;

In my opinion, this will be detrimental to the surrounding area. The proposed use is seen as incompatible with the majority of the abutting properties, which are principally single-family residential uses.

There are several factors which enter into this opinion. We have discussed them extensively above, in this report.

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(2) *It will be compatible with neighboring land uses.*

It is true that there are some small commercial uses along Park Avenue. These uses have been in place for extended periods and do not appear to have generated any negative impact.

But on closer review, we note the zoning code defines “COMMERCIAL DISTRICT C-1 is established to provide areas for commercial establishments and serve community and Town-wide shopping and service needs”.

In this case, I do not feel the use actually conforms to the intent. This is not a shopping or service need. In truth, none of the other commercial uses along Park Avenue are truly similar to the proposed use.

Even more critical in this case is the fact that except for the lot along Park Avenue, the remainder of the lots in the proposal, as well as virtually all other abutting uses, are single family residential uses. As we have discussed extensively in this analysis, this use is not seen as being compatible with residential neighbors, especially those so close to the subject.

But, perhaps most importantly, in both the commercial and residential zones, this use requires a special use permit. Clearly, the framers of the code anticipated the possibility of negative impacts. Again, the reason for this is simple- not all recreational outdoor facilities are compatible with many other local uses. We see this as a case in point.

(3) *It will not create a nuisance in the neighborhood.*

This appraiser feels this is the prime standard which this proposal fails to meet. At the beginning of this report, I have outlined in greater depth the factors which this proposal would appear to generate, rather than avoid generating, nuisance.

(4) *Adequate protection is afforded to the surrounding property by the use of open space.*

Because of the previous land fill and capping of the site, the elevation is now substantially higher than the neighboring properties to the north. It would seem unlikely that most plans to curb noise generated by the activities on site would be fully effective. The lot is long and narrow. It has very little open space to offer. What open space there may be on the lot all appears to be to the opposite side of the affected residential uses.

(5) *Safe vehicular access and parking are provided.*

Safe vehicular access and parking is anything but assured. During the hours of operation, traffic will be significantly increased in the area. The traffic in this area

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is already busy. During the summer season, traffic is increased substantially. Adding what is the largest parking lot for the area will most probably have some detrimental impact to traffic and parking.

- (6) *Control of noise, smoke, odors, lighting, and other objectionable feature is provided.*

We see the control of factors such as noise almost impossible to fully control. This is an outdoor recreational facility. By its use, the participants will likely generate noise, especially when 13 courts and accessory athletic uses are clustered so tightly together. Any future lighting or loudspeakers will most assuredly overwhelm any barriers or buffers proposed.

- (7) *The solar rights of the abutters are provided for.*

The solar rights of the abutters should not be impacted.

- (8) *It will be compatible with the Comprehensive Community Plan of the Town of Portsmouth.*

The Land Use Plan, Element #2 deals extensively with Recreation. It defines the goals and plans for the town for these facilities. There is no allusion to any recreational uses similar to the subject.

The Land Use Plan lists all the Non- Town Owned Facilities:

2.2.10 NON-TOWN FACILITIES

Common Fence Point - Is a neighborhood playground owned and maintained by the residents of Common Fence Point. Green Valley Country Club –

The Green Valley Country Club is an 18-hole championship course. Known as Newport's finest semi-private country club, it is open to the public.

Gull Cove Fishing Area - Gull Cove is a fishing area along Route 24. There are trails here and with a beach walk, make for a walk of a mile. This walk is tide dependent however, as most of the trail along the shore can be submerged at higher tides.

Montaup Country Club - Located on the shores of Mt. Hope Bay, Montaup Country Club is an 18-hole semi-private course. The fairly open, flatseaside course is known to be a good test of shot-making ability due to its sometimes tricky winds.

Newport National Golf Club - Newport National, which started out as a 200-acre landscape nursery, is now deemed the "Number One Public Access Course in New England," by New England Golf Monthly. The 18- hole course includes sloping fairways, marshes, and strategically placed bunkers.

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Oakland Forest - Located off Carriage Drive, the Oakland Forest and Meadow Trail is a 0.6-mile loop trail through a beautiful, old growth American Beech forest. Includes one of the last remaining stands of old growth American Beech trees on the East Coast. This once threatened forest now serves as a haven for people and wildlife alike. Saved by a joint effort in 2000 by the Town of Portsmouth and the Aquidneck Land Trust.

Sakonnet Greenway Trail –

The Sakonnet Greenway Trail (SGT) is the longest contiguous nature trail on Aquidneck Island at 10 miles long. The SGT is a true snapshot of inland Aquidneck Island. Users of the trail have the opportunity to view wildlife across meadows and woodlands as well as enjoy pastoral views of farms and agricultural landscapes.

South Prudence Management Area - The Management Area is located at the south end of Prudence Island. It is owned and operated by the RIDEM Division of Fish, Wildlife & Estuarine Resources, and is part of the National Estuarine Research Reserve System. It is open to the public. It contains a small beach, picnic area with two fireplaces and two tables, bike path, and fishing pier. The facility is in serious disrepair with much unused land. The State allows hunting on Prudence, but geographic limitations are unclear. This has created a very dangerous situation that must be corrected.

Teddy's Beach – Located on the Sakonnet in Island Park, Teddy's Beach is not staffed by lifeguards and has no facilities, but provides a scenic view of the Sakonnet. There is no off-street parking for the boat ramp and parking can be limited.

These non-town owned recreational uses are, for the most part, large tracts of open space. The golf courses are private businesses, but provide extensive open space, far less intensive use for the size of the lots, and in most cases, provide a benefit to their neighborhoods.

Other uses are open space, preserved by land trusts, or the community playground at CFP. None of these private recreational spaces compare to the subject proposal.

(9) *The health, safety and welfare of the community are protected.*

The welfare of the community is seen as the very factors which would be negatively impacted. This is more fully discussed in the beginning of this report.

(10) *It is consistent with the Purpose of Design Standards set forth in Article IX, Section D. and, for developments within the Town Center District, the purpose of that district as expressed in Article III.*

Not applicable.

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Conclusions:

In speaking of the proposal, in the Island Park OASIS Beach Volleyball Operational Plan, it is noted:

Many players emphasize the camaraderie of the sport, others talk about the incredible setting on the beach.

I did feel it worth noting that the location is a capped landfill, not a beach.

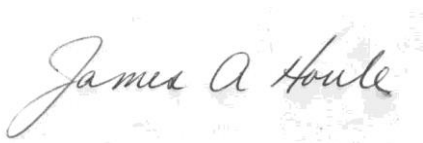
In point of fact, this appraiser sees this as an incompatible use, not only for its proximity to the residential neighborhood, but on a capped landfill. But there are other uses for such a site which are more compatible.

In previous testimony before the Portsmouth Zoning Board, regarding other matters, I have noted that throughout New England, a common and typical use for capped landfills has been solar fields.

Solar arrays have their own drawbacks in many cases, but for this site, it would appear such a use would be natural. There would be no noise, no traffic and likely, no disturbance of the soil at the site.

To repeat my original findings, I feel that this petition fails to meet the standards for the special use request needed for the outdoor volleyball courts. It is not in harmony with the intent of the zoning code and comprehensive plan.

Signed:

A handwritten signature in cursive script that reads "James A. Houle". The ink is dark and the signature is written over a light, textured background.

James A. Houle
RI Certified General Appraiser

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QUALIFICATIONS OF APPRAISER

JAMES A. HOULE

LICENSING:

Rhode Island Appraisal Certification: #CGA.0A00769

Massachusetts Appraisal Certification: #1000015

Rhode Island Real Estate Broker: # REB.0009805

BUSINESS EXPERIENCE:

James Houle & Associates, Portsmouth, RI	1981- Present
Real Estate Appraisal, Consulting & Brokerage Services	
Deputy Tax Assessor, City of Newport, RI	1990- 1998
Appraisal and Mass Assessment Services	
Gold Star Group, Middletown, RI	1988-1989
Real Estate Education and Franchise Development	
Atlantic Properties, Middletown, RI	1985-1988
Principal Broker	
L.H. Houle Realty, Stafford Springs, Conn.	1975-1983
Consulting Broker	
Better Homes Realty, Middletown, RI	1978-1981
Principal Broker	
Heritage Realty, Newport, RI	1975-1978
Associate Broker	
Kennan Associates, Cumberland, RI	1973-1975
Associate Broker	

PROFESSIONAL QUALIFICATIONS AND RELATED BOARDS:

ACTIVE:

Licensed Real Estate Broker, Rhode Island

Certified Real Estate Appraiser, Rhode Island

Certified Real Estate Appraiser, Massachusetts

Approved by State of Rhode Island, Office of Municipal Affairs, to perform city- wide mass appraisals and revaluations, as required by Rhode Island law

Board of Realtors, (Officer of Newport County Board, 1975)

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RELATED EDUCATION:

BA, Clark University, Worcester, Mass. 1973

Society of Real Estate Appraisers, course #101 Introduction to Appraisal
Society of Real Estate Appraisers, course #102 Small Income Property Appraisal
R.I. Tax Assessor's Administrative Course
Graduate Realtor Institute, Board of Realtors
Uniform Standards of Professional Practice, University of Rhode Island
Income Approach to Property Valuation, University of Rhode Island
Practical Application of Income Approach to Value, University of Rhode Island

Seminars:

Impact of Environmental Issues in Appraisals, RI Board of Realtors
Rhode Island Tax Law, NLI Institute
Performing an In House Revaluation, International Order of Assessing Officers
Lead Issues in Real Estate, RI Board of Realtors
Tax Issues in Real Estate, RI Board of Realtors
Appraiser as Expert Witness, RI Board of Realtors
Appraising FHA Today, McKissock
Report Writing, MBREA
Oddball Properties, McKissock
Environmental Issues for Appraisers, McKissock
The Cost Approach, McKissock
History of Zoning, Appraisal Institute
Appraisal of Fast Food Facilities, McKissock
Appraisal of Land Subject to Ground Leases, McKissock
Appraisal of Owner Occupied Commercial Facilities, McKissock

Seminars as Approved Instructor:

Real Estate Tax Assessment: How to Judge its Equity
Real Estate Financing: Conventional and Creative

APPRAISAL EXPERIENCE:

Active since 1976, performing appraisals of single and multi family housing and commercial/ industrial properties.
Experience in appraising impacted/ contaminated properties
Experience in appraising specialty/ partial interests
Experience in appraising water related utilities
Accepted as expert in Rhode Island Family Court
Accepted as expert in Rhode Island Superior Court
Accepted as expert in Rhode Island Bankruptcy Court
Accepted as expert before several Rhode Island community Boards of Tax Appeals
Accepted as expert before several Rhode Island Zoning Boards of Appeal

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SIGNIFICANT CLIENTS

Ford Motor Company
NYNEX (Bell Atlantic)
National Grid
Stone Bridge Water District, Tiverton, RI
Church Community Housing Corporation, Newport, RI
City of New Shoreham, Rhode Island, Assessor's Office
City of Swampscott, Massachusetts, Assessor's Office
City of Newport, Rhode Island, Assessor's Office
City of Newport, Rhode Island Planning Office
City of Newport, Rhode Island, Public Utilities Department
Twin River Gaming Facility, Lincoln, RI
Appraisal Resource, East Greenwich, RI